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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,117	09/26/2003	Gregory P. Doten	22570-021002	7739
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EXAMINER				
PATEL, NIHIR B				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
04/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/672,117

Applicant(s)

DOTEN ET AL.

Examiner

NIHIR PATEL

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12.14.2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44 and 58-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44 and 58-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Response to Arguments

1. The indicated allowability of claim 44 is withdrawn in view of the newly discovered reference(s). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims **44 and 58-60** are rejected under 35 U.S.C. 102(b) as being anticipated by Westersten (US 3,712,133).

4. **As to claim 44**, Westersten discloses a flow-meter probe that discloses method steps of aligning the implantable flow probe **10** in a desired position with respect to the blood vessel; and adjusting a size of the probe to achieve a close fit with the blood vessel to hold the flow probe in the desired position with respect to the blood vessel (see **col. 2 lines 45-67**); wherein the probe includes a sensor housing, a coupling member and a closure mechanism, and wherein aligning the implantable flow probe in a desired position with respect to the blood vessel and adjusting a size of the probe to achieve a close fit with the blood vessel to hold the flow probe in the desired position with respect to the blood vessel includes (see **col. 3 lines 5-30**) connecting the coupling member to the sensor housing to form a structure such that an outwardly facing surface of the coupling member is received by an inwardly facing surface of the sensor housing (see **figures 2-4**); positioning the structure to partially encircle the blood vessel such that an inwardly facing

surface of the coupling member closely fits the exterior of the blood vessel; and coupling a closure mechanism to the structure such that a combination of the structure and the closure mechanism encircles and closely fits with the exterior of the blood vessel (see col. 2 lines 45-67).

5. **As to claim 58**, Westersten teaches the method steps of adjusting a size of the probe includes changing a diameter of the probe to a diameter of the blood vessel (see figure 4 and col. 2 lines 45-67; removing the wedge 13 changes the diameter of the probe).

6. **As to claim 59**, Westersten teaches the method step of aligning the implantable flow probe in a desired position with respect to the blood vessel and adjusting a size of the probe to achieve a close fit with the blood vessel to hold the flow probe in the desired position with respect to the blood vessel that includes adjusting the size of the probe to partially encircle an exterior of the blood vessel and achieve a close fit with the blood vessel; and aligning the implantable flow probe in a desired position with respect to the exterior of the blood vessel (see figure 4; col. 2 lines 45-67).

7. **As to claim 60**, Westersten teaches the method step of positioning the coupling member using a positioning tool (see column 2 lines 45-67).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772